

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CRIMINAL NO. 01-10373-RWZ

UNITED STATES OF AMERICA

v.

PAUL A. DECOLOGERO, et al.

ORDER ON MOTION TO COMPEL OF DEFENDANT, PAUL A. DECOLOGERO
(##766 AND 776)

January 13, 2006

ZOBEL, D.J.

In June 2004, after an ex parte hearing, the court allowed the issuance of a subpoena pursuant to Rule 17 (c), Fed. R. Crim. P. to the Bureau of Prisons and the Federal Bureau of Investigation for records of several persons who allegedly had a role in this case. They included, among others, Kevin Meuse, Thomas Regan, John DeCologero, Sr., and Stephen DiCenso. The records were apparently produced to the government which has declined to turn over to defendant most of these papers. Defendant now moves to compel their production. The government objects on several grounds, largely based on the language and purpose of Rule 17 (c) and the prior history of this case.

The history shows again the pit falls of ex parte determinations. The documents at issue had been requested by defendants during the discovery process; the Magistrate Judge denied the request as did this court on appeal. I did not appreciate that background when I heard defendant's motion to allow the subpoena.

Rule 17 sets out the requirements and processes pertaining to the issuance and use of subpoenas. The first requisite is that subpoena's are for the production of documents at trial. Second, they are not a substitute for discovery, and they certainly are not a mechanism for avoiding adverse discovery rulings. Third, they require a showing that the materials sought are admissible in evidence. The last purpose is not satisfied by the prospective use of the material only for impeachment.

Upon reconsideration of my earlier allowance of the subpoena, I am persuaded that the ruling was improvident and in error. Accordingly, the motion to compel is denied.

DATE

Rya W. Zobel
RYA W. ZOBEL
UNITED STATES DISTRICT JUDGE